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11 **UNITED STATES DISTRICT COURT**
FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 **SAN FRANCISCO DIVISION**

13 IN RE OPTICAL DISK DRIVE
14 PRODUCTS ANTITRUST LITIGATION

Case No. 10-MD-02143-RS
MDL No. 2143

15 This document relates to: ALL INDIRECT
16 PURCHASER ACTIONS

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18 **CONNER ERWIN'S NOTICE AND**
STIPULATION OF NO FURTHER
19 **APPEAL FROM THE NINTH CIRCUIT'S**
20 **JUNE 6, 2022 OPINION**
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Conner Erwin files this Notice to advise and further stipulate that he is not pursuing further appellate relief in connection with the Ninth Circuit’s June 6, 2022 Memorandum Opinion affirming in part, and vacating in part this Court’s July 2, 2021 Order Granting in Part Renewed Motion for Attorney Fees and Denying Motion to Enforce Settlement, Return Class Funds, and Disgorge Fees (Dkt. 3027). *See In re Optical Disk Drive Prods. Antitrust Litig.*, No. 21-16291, 2022 U.S. App. LEXIS 15571 (9th Cir. 2022) (*ODD III*).¹

The Ninth Circuit remanded for this Court “to recalculate the award using the proper starting point of \$22,205,000.” *ODD III*, 2022 U.S. App. LEXIS 15571, at *9. Additionally, it observed that “on remand the district court would not abuse its discretion in awarding HB \$26,646,000 which represents a 20% upward departure from HB’s bid of \$22,205,000.” *Id.* at *10 n.4. The Ninth Circuit’s mandate issued on July 25, 2022. *See* Dkt. 3094.

As the Court is aware, under the Court’s Order Approving IPP’s Revised Plan of Distribution and Schedule, IPPS must file their proposed Second Round Distribution plan and amounts with the Court by **September 2, 2022**. *See* Dkt. 3089 at 1–2. The Secondary Distribution is scheduled for **September 19–30, 2022**. *See id.* at 2. Any reduction in fees would ostensibly need to be made ahead of September 2nd to inure directly to the class members’ benefit via a Secondary Distribution. Erwin additionally notes that, pursuant to the Ninth Circuit’s instructions, he intends to move for an incentive award and an award of attorneys’ fees (to come from class counsels’ fees) to the extent the Court makes a fee reduction. *See ODD III*, 2022 U.S. App. LEXIS 15571, at *10 n.5 (“On remand, commensurate with its determination of proper attorneys’ fees pursuant to this memorandum, the district court shall determine what fees, if any, Erwin is entitled to receiving for benefitting the class under the equitable principles set forth in *Rodriguez v. Disner*, 688 F.3d 645, 658

¹ Erwin’s counsel emailed class counsel on July 29, 2022 to inquire whether they intend to appeal from the Ninth Circuit’s July 2, 2021 opinion. As of the filing of this Notice, they have not responded.

(9th Cir. 2012)').

Dated: July 29, 2022

Respectfully submitted,

/s/ Robert W. Clore

Robert W. Clore

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Certificate of Service

The undersigned certifies that today he filed the foregoing on ECF which will send electronic notification to all attorneys registered for ECF-filing.

DATED: July 29, 2022

/s/ Robert W. Clore

Robert W. Clore